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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.771 of 1999

APPELLANT (In Jail) — Shiv Kumar Panika, s/o Pawansay, aged about 30 yrs. r/o Gram- Dudhhiyakala, P.S. Baikunthpur, Distt-Koriya (MP)

Vs

RESPONDENT — The State of Madhya Pradesh through -Aarchi Kendra, Baikunthpur, Distt-Koriya (MP)

Present:
Mr. S.L. Bajaj, Advocate for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent-State.

ORAL JUDGMENT

(3rd July, 2007)

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentences dated 30th January, 1999 passed by learned Additional Sessions Judge, Baikunthpur, District Koriya, in Sessions Trial No.248/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his wife Rambai

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and son Sadhan Ram, sentenced him for each murder to undergo R.I. for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year under each count. Both the sentences have been directed to run concurrently.

Case of the prosecution, in brief, is that Pawan Sai, father of accused/appellant, lodged a report (Ex.P-1) in the Police Station Baikunthpur to the effect that since last one month accused/appellant was suffering from mental illness, therefore, he used to remain in the house. On the fateful day, Rambai (since deceased), wife of accused, was working in the house, his son Sadhan Ram (since deceased), aged 4 years was playing in the courtyard of the house and accused/appellant was also in the house, whereas, he had gone to his agricultural field. Kismat Bai came there and informed him that accused/appellant has committed murder of his wife & son by attacking with a Tabbal.

Receiving this report, the Station House Officer, Police Station Baikunthpur registered the crime under Section 302 of the IPC, left for the scene of occurrence, after giving notice (Ex.P-3) to the Panchas prepared the inquest (Ex.P-4) on the body of Rambai and after giving notice (Ex.P-5) to the Panchas, he prepared the inquest (Ex.P-6) on the body of Sadhan Ram. He also prepared the site plan Ex.P-8.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

During the police custody accused/appellant gave memorandum (Ex.P-9) regarding the place where he kept Tabbal, weapon of offence and in pursuance of that he got recovered Tabbal under Ex.P-10. Body of deceased Rambai was sent for postmortem examination to Community Health Centre, Baikunthpur where Dr. D.K. Chikanjuri (PW-9) conducted postmortem, prepared the report Ex.P-15 and opined that cause of death was incised wound of neck (cutting great vessels, nerve trunk, trachea, oseophagus vertebral column) and death was homicidal. Body of Sadhan Ram was also sent for postmortem examination to Community Health Centre, Baikunthpur, where Dr. D.K. Chikanjuri (PW-9) conducted postmortem, prepared the report Ex.P-17 and opined that the death was due to cutting of neck (great vessels, trachea, oseophagus, cervical vertebra & nerve trunk) and the same was homicidal. Weapon of offence, Tabbal was also examined by the doctor and he gave his report Ex.P-18A.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Baikunthpur for commission of offence under Section 302 of IPC, who in turn committed the case to learned Sessions Judge, Sarguja, from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

charge against the accused/appellant examined 12 witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution case and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant herein, as aforesaid.

We have heard Mr. S.L. Bajaj, Advocate for the appellant and Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent/State.

Mr. Bajaj, learned counsel for the accused/appellant has not disputed the homicidal deaths of Rambai & Sadhan Ram. Moreover, Dr. D.K. Chikanjuri (PW-9), who conducted postmortem on the body of Rambai & Sadhan Ram, has stated that death of Rambai was on account of cutting of great vessel of neck and was homicidal in nature. He has further stated that he conducted postmortem on the body of Sadhanram also, he died on account of cutting of great vessel of neck and death was homicidal in nature. Therefore, in view of the above it is established that deaths of Rambai & Sadhan Ram were homicidal in nature.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as involvement of the accused/appellant in the crime in question is concerned, in this case there is no ocular or direct evidence connecting the accused/appellant with the crime in question and the whole case rests upon the circumstantial evidence i.e.

a. Deceased Rambai & Sadhan Ram and accused were only persons in the house, when people came to know about the incident, father of the accused was informed, the villagers were collected, the house was bolted from the inside, therefore, after climbing the roof of the house and removing the tiles of roof they saw the accused along with deceased persons. Bodies of Rambai & Sadhan Ram were lying in a pool of blood and accused was present in the house holding Tabbal in his hand.
b. That, the Tabbal, weapon of offence, was recovered at the instance of deceased.

Mr. Bajaj, learned counsel for the appellant argued that in the FIR (Ex.P-1) itself the father of accused has categorically mentioned that the accused was suffering from mental illness and he has stated so in his court evidence also. Moreover, PW-5 Lalla Prasad Singh has also stated that the accused was suffering from insanity. Therefore, from the above evidence it is established that the accused/appellant was suffering from mental illness, as such, he is entitled for benefit

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

under Section 84 of the I.P.C. and on this ground he is entitled for acquittal.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

So far as the involvement of the accused/appellant in crime in question is concerned, Pawan Sai (PW-1), father of accused, has stated that on the date of incident he went to the agricultural field for the purpose of irrigation of crop, Kismat Bai came there crying and said that there is quarrel at the residence, therefore, he came to the house and saw that villagers were standing there. Both the doors of his house was closed from inside, therefore, he climbed the roof of the house and after removing the tiles of roof he saw that body of Sadhan Ram was lying in the courtyard, his head was separated from the body and the body of Rambai was lying near the wall. After seeing this he fell down. In Para-3 of his evidence he has stated that accused Shivkumar was in his house. In the cross-examination, he has stated that since both front & back doors were closed from inside therefore, he is saying that Shivkumar may have been in the house.

PW-2 Rambai has also stated that she is neighbour of the accused. She heard Raghunath saying that his father has murdered

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

his mother. Accused was inside the house. She does not know how Rambai & Sadhan Ram died. This witness has been declared hostile.

PW-3 Shobhit Ram has stated that the accused was present in the courtyard of house and he was carrying Farsa stained with blood. In the cross-examination this witness has stated that it is incorrect to say that he did not see the accused in the house. He has further stated that it is correct to say that accused did not make any attempt to ran away, the villagers had also encircled the house of accused. Police seized Farsa from the accused.

PW-6 Sundarlal has stated that Raghunath, son of accused was on the roof of the house and saying that his father has murdered his mother & brother. Pawan Sai was also on the roof of the house. Bodies of Rambai & Sadhan Ram were lying in the house. After climbing on the roof of the house he saw that accused was standing in the courtyard of the house holding Balua in his hand and after seeing them accused went inside the room and bolted it from the inside. The accused thereafter threw Farsa in the kitchen garden.

Even though PW-7 Raghunath Prasad, son of accused, has been declared hostile but he has stated in Para 4 of his evidence that the accused was in the house, but in fact, he did not see him attacking his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

mother & brother and the body of his mother & brother were lying in the house.

From the above evidence, it is established that the dead bodies of Rambai & Sadhan Ram were lying in a pool of blood in the house of accused and the accused was also present in the house carrying Tabbal in his hand. It is also established that when Pawan Sai left the house, accused/appellant, his wife and son were in the house and thereafter the bodies of Rambai & Sadhan Ram in injured condition were seen by the above witnesses. The accused was seen holding Tabbal, weapon of offence, in his hand and the house was bolted from inside. The accused has not offered any explanation that how his wife and son were murdered and who was responsible for the same. In the given situation, as per provisions of Section 106 of the Evidence Act the burden was on the accused to explain the circumstances under which his wife and son sustained vital injuries, but he has failed to discharge the burden.

The Investigating Officer (PW-6) has stated that while in police custody the accused gave memorandum (Ex.P-9) regarding the place where he kept Tabbal and in pursuance of that Tabbal was got seized at the instance of accused under Ex.P-10. Even PW-5 Lalla Prasad Singh has stated that accused gave memorandum (Ex.P-9) to

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the police in his presence which bears his signature at place 'A to A' and thereafter at the instance of accused Tabbal was seized under Ex.P-10. Said Tabbal was sent for examination to Dr. D.K. Chikanjuri (PW-9) under Ex.P-18, who after examination gave his report (Ex.P-18A) and opined that the injuries described over the necks of Sadhan Ram & Rambai resulting in their deaths may be produced by the above described weapon.

In view of the above, it is established that the weapon of offence was recovered at the instance of accused/appellant.

Now coming to the argument advanced by learned counsel for the accused/appellant that at the time of commission of crime the accused was suffering from mental illness, as such he is entitled for the benefit of Section 84 of the IPC.

In order to seek protection under Section 84 of IPC the onus is on the accused to establish that at the time of commission of offence he was suffering from unsoundness of mind. Section 84 contemplates that:

> "Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Therefore, when a plea of legal insanity is set-up, the Court has to ascertain whether at the time of commission of offence the accused under the supervening circumstances, on account of unsoundness of mind, was incapable of knowing the nature of act or that he was doing what was either wrong or contrary to the law.

Section 105 of the Evidence Act envisages that;

> "when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Expectations in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

In order to appreciate the arguments of learned counsel for the accused/appellant, we have to scrutinize the material available on record to ascertain whether the accused has been able to discharge the burden of Section 105 of Evidence Act. In the present case, in the first instance Pawan Sai (PW-1), father of accused, lodged the report Ex.P-1 in the police station regarding commission of crime in which it has been mentioned that his son became mad since last one month. Similarly, Lalla Prasad Singh (PW-5) has also stated in Para 9 of his evidence that accused was in the mad condition. He was telling the place where Farsa was lying by pointing towards that place.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

During trial, the accused was not medically examined as to whether the accused was suffering from mental illness at the time of commission of crime, therefore, this Court ordered for medical examination of the accused and in pursuance of Court's order the accused was sent Medical College, Raipur where he was examined by a team of doctors constituted for the purpose. The accused was admitted in the hospital from 9.4.2007 to 18.6.2007 in the psychiatry ward. Medical board has given its opinion that background history was obtained from the patient himself, information provided by the jail staff regarding his behaviour and his family members, during last hospitalization in psychiatry ward. The patient's ward behaviour was observed regularly and serial mental state examination was done during his stay in psychiatry ward. Patient Shivkumar was in judicial custody immediately after the date of crime i.e. 21.5.1998. There is no report of any abnormal behaviour, since his arrest for the crime, till he was hospitalized in Dr. B.R.A.M. Hospital, Raipur on 29.1.2007. There is no history of any psychiatric treatment prior to the treatment at Dr. B.R.A.M. Hospital, Raipur. Information provided by family members about his abnormal behaviour is inconsistent and unreliable and also dose not conform to any known psychiatric disorder. Mental illness of psychotic type does not usually remit

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without treatment. Spontaneous recovery, which occurs in small number of cases, usually takes more than three months period. Based on these observations it is opined that Shiv Kumar was not having any major psychiatric illness on 21.5.1998.

In view of the above opinion of the medical board, the accused was not suffering from any mental illness at the time of commission of crime. Even the accused in his examination under Section 313 of Cr.P.C. has not stated anything about his mental condition at the time of commission of crime, he has simply denied the material appearing against him in the prosecution evidence and reply of each question given by the accused shows that while giving reply he was mentally alive and he gave the reply intelligently.

There is no other independent evidence or material on record to establish that the accused was suffering from mental illness nor in order to ascertain that the accused was suffering from mental illness at the time of commission of offence. Even, the Investigating Officer has not been cross-examined on that aspect. Therefore, merely on the statement given by the father of accused that at the time of commission of crime the accused was in mad condition and casual statement of PW-5 Lalla Prasad Singh that the accused was mad at the time of commission of offence, it cannot be held that the accused

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has discharged the burden which was on him as per provisions of Section 105 of the Evidence Act.

In view of the above discussion, we do not find any merit in the arguments advanced by Mr. Bajaj, leanred counsel for the accused/appellant that the accused/appellant was suffering from mental illness at the time of commission of crime.

For the foregoing discussion, based on the circumstantial evidence the prosecution has been able to establish beyond reasonable doubt that from the circumstantial evidence only irresistible conclusion can be drawn that the accused/appellant was the author of crime in question and there is no possibility of any third person committing the heinous crime of murder of Rambai & Sadhan Ram.

In the result, we do not find any illegality or infirmity in the judgment of the trial court convicting and sentencing the appellant for committing the murder of Rambai & Sadhan Ram. The appeal of the appellant has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-